
Public Safety Committee

ESSB 5465

Brief Description: Creating an office of the corrections ombuds.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Miloscia, Hasegawa, Rolfes, O'Ban, Darneille, Angel and Frockt).

Brief Summary of Engrossed Substitute Bill

- Creates the Office of the Corrections Ombuds (Ombuds), which monitors state correctional facilities, and serves informational, investigative, and advocacy functions related to the rights of incarcerated persons.
- Requires the State Auditor to designate, by a competitive bidding process, a nonprofit organization that will contract to operate the Ombuds office.
- Requires the Governor to convene an Ombuds Advisory Council to support the functions of the Ombuds.

Hearing Date: 3/21/17

Staff: Omeara Harrington (786-7136).

Background:

Ombuds Programs.

An ombuds is an appointed person or office charged with representing the interests of the public or a particular group by providing information and receiving, investigating, and addressing complaints regarding a system or agency. Washington has several ombuds offices, including the Family and Children's Ombuds, the Education Ombuds, The Health Care Authority Ombuds, the Ombuds for Self-Insured Workers, the Long-Term Care Ombuds, and the Developmental Disabilities Ombuds.

The Department of Corrections Internal Ombuds.

In 2016 the Department of Corrections (DOC) created an ombuds position within the DOC's Executive Policy Office. The ombuds is intended to act as a resource for families and inmates by

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providing impartial assistance and investigating and attempting to resolve allegations of noncompliance of DOC policies and state law. In addition, the DOC ombuds may recommend changes in DOC policies, procedures, and statutes if systemic problems are identified.

The Department of Corrections Offender Grievance Program.

The DOC has a formal grievance process overseen at the facility level by grievance coordinators. Only incidents, policies, or practices within DOC jurisdiction that affect an offender personally and that do not have an established appeals process are grievable. Examples of grievance topics include: conduct of employees or other offenders, health services, policies, prison operations, and food services. The grievance program contains an appeals system that allows an offender to request review at a higher level if he or she is not satisfied with a response.

The Department of Corrections Family Council.

The DOC facilitates local and statewide family councils that are charged with enhancing communication with the DOC, assisting in developing policies, procedures, and programs that support family reunification, and working with the DOC to improve offender quality of life and successful reentry. Local family councils are established at every prison to address facility-specific issues. One family member from each local family council must be selected to serve as a representative on the Statewide Family Council, which focuses on issues and concerns that impact a broad range of offenders and their families.

Summary of Bill:

Office of the Corrections Ombuds.

An Office of the Corrections Ombuds (Ombuds) is created for the purpose of:

- providing information to inmates, family members, representatives of inmates, employees of the DOC, and others regarding the rights of inmates;
- providing technical assistance to support inmate self-advocacy, alternative dispute resolution, and individual representation;
- identifying systemic issues, reporting to the Legislature, and advocating for systemic reform; and
- monitoring and promoting compliance with statutes, rules, and policies pertaining to conditions of correctional facilities and the rights of inmates.

Subject to appropriated funds, the State Auditor must designate, by a competitive bidding process, a nonprofit organization that will contract to operate the Ombuds office. The selection process must include direct stakeholder participation in the development of the request for proposals, evaluation of bids, and final selection.

The selected organization must: (1) possess significant legal expertise, competence with mediation and alternative dispute resolution, and experience working within criminal justice and correctional environments addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues; (2) have experience and the capacity to effectively communicate criminal justice issues with policymakers, stakeholders, and the public; and (3) be prepared and able to provide all program and staff support necessary to carry out all duties of the Ombuds.

The designation of the organization contracted to provide the services to the Ombuds cannot be revoked except upon a showing of neglect of duty, misconduct, or inability to perform duties.

Responsibilities of the Ombuds.

The Ombuds is responsible for:

- establishing priorities for the use of limited resources;
- maintaining a statewide toll-free telephone number, a collect telephone number, a website, and a mailing address for the receipt of complaints and inquiries;
- providing information to inmates, inmates' families, employees, and others on the rights of inmates;
- providing technical assistance to support inmate participation in self-advocacy, utilizing existing grievance, and appeal procedures;
- monitoring the DOC compliance with applicable federal, state, and local laws, rules, regulations, and policies with a view toward protecting the rights of inmates;
- monitoring and participating in legislative and policy developments affecting correctional facilities and advocating for systemic reform aimed toward protecting the rights of inmates;
- establishing a statewide uniform reporting system to collect and analyze complaints of the DOC and establishing procedures for investigating and resolving those complaints;
- submitting an annual report to the Ombuds Advisory Council analyzing the work of the Ombuds; and
- adopting and complying with rules, policies, and procedures necessary to implement the responsibilities of the Ombuds.

Ombuds Advisory Council.

By August 1, 2017, the Governor must convene an Advisory Council (Council). The Council must participate in a priority setting process to develop priority recommendations to the Ombuds, review data collected by the Ombuds, review reports issued by the Ombuds prior to their release, and make recommendations to the Ombuds regarding the accomplishment of its purposes. The Council has authority to issue its own reports and recommendations and must biannually review the Ombuds' performance, make recommendations regarding the Ombuds budget, make recommendations for changes in the law that would enhance the Ombuds' effectiveness, and report its findings and recommendations to the Governor and the Legislature.

The Council is composed of the following members, serving three-year terms:

- one democrat and one republican member of the Legislature;
- one former inmate who has successfully reintegrated;
- two family members of a current inmate;
- an expert with significant criminal justice or correctional experience who is not a state employee or contractor;
- two community members with extensive knowledge and experience in specified areas: one with knowledge of the accommodation needs of individuals with disabilities; and the other with knowledge of issues related to racial, ethnic, or religious diversity within the correctional system;
- a community member with dispute resolution training with experience working in corrections or criminal justice;
- the DOC staff serving as the internal Ombuds, if any; and
- a bargaining unit representative.

Ombuds Investigations.

The Ombuds may initiate and attempt to resolve an investigation upon its own initiative, or upon receiving a complaint from an inmate, family member or other representative of an inmate, an employee, or others, regarding: abuse or neglect; DOC decisions, actions, inactions, or omissions; policies, procedures, and rules; or alleged violations of the law. Except in cases involving a complaint related to threats of bodily harm, prior to filing a complaint with the Ombuds, an inmate must reasonably pursue resolution of the complaint through the internal DOC grievance process. If more than 90 days have passed since filing an internal grievance, the inmate may file a complaint with the Ombuds even if the internal grievance process is not complete. The Ombuds may decline to investigate any complaint, and cannot investigate complaints related to an inmate's underlying criminal conviction or a complaint related to a DOC employee's employment relationship with the DOC.

At the conclusion of an investigation of a complaint, the Ombuds must render a public decision on the merits of the complaint, including any recommendations regarding further action, and communicate the decision to the inmate, if any, and to the DOC. Before announcing a conclusion or recommendation that criticizes a person or the DOC, the Ombuds must attempt to notify the person or the DOC.

If the Ombuds believes additional action is warranted following an investigation, the Ombuds may choose to report a finding of abuse, neglect, or other rights violation to the Legislature or take other action the Ombuds considers necessary.

Access to Prisons and Records.

The Ombuds must have reasonable access to correctional facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. This includes the opportunity to interview and communicate with any inmate, employee of the DOC, or other person, including the person thought to be the victim of the abuse, who might be reasonably believed to have knowledge of the incident under investigation. Access must be afforded upon request when an incident is reported to the Ombuds, when the Ombuds determines there is reasonable suspicion that a reported incident occurred, or when the Ombuds determines the inmate may be in imminent danger of serious abuse or neglect.

The Ombuds must also have reasonable access to all DOC facilities and to programs for inmates for the purpose of providing information about inmate rights and Ombuds services, monitoring compliance, and inspecting, photographing, and recording areas of the facility that are accessible to inmates. At a minimum, the Ombuds must have access during normal working and visiting hours.

The Ombuds also has the right to access, inspect, and obtain copies of information, records, or documents in the possession or control of the DOC that the Ombuds considers necessary in an investigation of a complaint. When the Ombuds is investigating potential abuse or neglect, access to relevant records must be provided not later than 10 business days from the Ombuds' request. If there is reasonable suspicion that an inmate's health or safety is in serious immediate jeopardy, or if an inmate dies while in custody, records must be provided within 72 hours.

Confidentiality of Information Collected and Maintained by the Ombuds.

Any correspondence between the Ombuds and an inmate is confidential, and may not be disclosed except with informed consent, or when disclosure is impliedly authorized in order for the Ombuds to carry out its duties. However, to the extent the Ombuds reasonably believes necessary, the Ombuds must reveal information obtained in the course of providing its services to prevent reasonably certain death or substantial bodily harm, and may reveal information obtained in the course of providing its services to prevent the commission of a crime. The Ombuds must not disclose any inadvertently obtained personally identifying information about individual DOC staff unrelated to an investigation.

Protection Against Retaliation.

No civil action may be brought against any Ombuds employee for good faith performance of his or her responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against a DOC employee, an inmate, a family member, or other person for any communication or information exchanged to aid the Ombuds in carrying out its responsibilities, unless the communication or information is made, given, disclosed maliciously, or without good faith.

Appropriation: None.

Fiscal Note: Requested on March 9, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.